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UNCLAS SECTION 01 OF 03 KHARTOUM 000634

DEPT FOR SE GRATION, S/USSES, AF A/S CARSON, AF/E
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TAGS: [PREL](#) [PGOV](#) [PHUM](#) [EAID](#) [KDEM](#) [KPKO](#) [AU](#) [UNSC](#) [SU](#)
SUBJECT: SPLM DRAFT REFERENDUM ACT FOR SOUTHERN SUDAN

REFS: A. KHARTOUM 240
[1](#)B. KHARTOUM 562
[1](#)C. KHARTOUM 626

[1](#)1. (SBU) SUMMARY: Government of Southern Sudan (GOSS) ministers maintain that the SPLM is open to outside assistance in crafting pre- and post-2011 referendum scenarios, but the responsibility for organizing such an endeavor must fall to Secretary General Pagan Amum. In the view of the GOSS, the NCP continues to undermine SPLM efforts to finalize the Referendum Act; the last discussions between the two parties on the issue occurred in February 2009. The SPLM draft Referendum Act strictly limits the definition of a Southerner, but provides significant space for freedom of expression and association, in addition to broad provisions for international observation and monitoring at all stages of the Referendum process. Voters would be presented with the option of either "secession" or "confirmation of Sudan's unity" in January 2011, with full implementation of the Referendum's outcome (consolidation or dissolution of Sudan's many militaries, relevant legislative reforms, preparation for continued con-federal status or statehood) complete by July 9, 2011. END SUMMARY.

[1](#)2. (SBU) GOSS Minister for Legal Affairs and Constitutional Development Michael Makuei passed to Acting Consul General Juba the SPLM's yet-to-be accepted draft of the Southern Sudan Referendum Act. The latter hand-over followed a multi-hour, multi-minister dinner discussion in which GOSS contacts maintained that it is the SPLM, not the GOSS, which must convene a working group on pre- and post-referendum arrangements. While wholly supportive and receptive to outside assistance in crafting actionable referendum scenarios, GOSS Labor Minister Awut Deng Acuil, Cabinet Affairs Minister Luka Tombe Monoja, SPLA Affairs Minister Nhial Deng Nhial, and Makuei himself emphasized that there has been little internal planning to date. In particular, Labor Minister and Kiir confidante Acuil maintained that neither of the two most recent SPLM Political Bureau meetings had focused on the issue due to growing SPLM doubts about NCP commitment to the 2011 Referendum. She also opined that Secretary General Pagan Amum, notorious for his poor attention to the party's internal communications, "had not yet sufficiently empowered either his national secretariat or his deputies to tackle such issues -- or delegated them to 'trusted individuals' within the party's National Liberation Council."

[1](#)3. (SBU) Makuei has been the backbone of SPLM negotiating efforts on the Referendum Act via the joint SPLM/NCP Executive Committee talks, first commissioned by GNU President Bashir and GOSS President Kiir, and then delegated in late 2006 to their deputies: GNU Vice President Ali Osman Taha and GOSS Vice President Riek Machar. Three years after their inception, the "ExecComm Talks" are supported by fourteen sub-committees capable of carrying out simultaneous negotiations focused on issues ranging from technical-level implementation to a political settlement on the crisis in Darfur. Vice President Machar presented the SPLM's draft Referendum Act to

his NCP counterparts in August 2008.

¶4. (SBU) Direct talks broke down in November 2008, following Makuei's surprise assertion to his GNU Justice Minister counterpart that the SPLM would be willing to assume "appropriate portions of Sudanese national debt" as a condition of Southern independence. According to the SPLM, the NCP has failed to respond with its preconditions for signature, despite its insistence that decisions on the division of national assets and liabilities post-2011 be made before it will agree to the draft law. SPLM Secretary General Pagan Amum told Acting CG on April 17 that the SPLM would not submit its own position until: 1) it has received the NCP's proposals, 2) it is certain that these reflect what the NCP has agreed upon internally in terms of what it wants. Makeui maintains that the NCP has refused to renew discussions on the SPLM's draft since February 2009.

¶5. (U) The following paragraphs summarize main components of the draft law. The forty-seven page document has been sent to S/USSES via e-mail.

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REFERENDUM OPTIONS: ONLY TWO
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¶5. (SBU) The SPLM's draft "Southern Sudan Referendum Act" calls for a referendum to occur in January 2011, with results announced three-days after balloting, and full implementation of the CPA's referendum arrangements to be completed by July 9, 2011. (COMMENT: We find announcement of results merely three-days after balloting potentially problematic, given inclusion of "mobile voting centers" for the South's nomadic populations, and the ever-present logistical

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and communications challenges of the South. END COMMENT.)

¶6. (SBU) According to the Act, should Southerners vote to secede, referendum arrangements include a review of the Interim Constitution of Southern Sudan and the laws of the South, disbanding of the nation's Joint Integrated Units, GNU/GOSS "national asset sharing along a proportional basis with due consideration to the level of development in each part," and calls upon the CPA signatories to make the "necessary arrangements to facilitate transition of Southern Sudan to a sovereign State."

¶7. (SBU) On the other hand, should voters opt to "confirm the unity of the Sudan," the SPLA, SAF, and JIUs would be integrated and transformed into a National Army, the Interim National Constitution and national and Southern laws would be reviewed "to conform with Sudan's new status, and unity would occur "in accordance with the provisions of the Comprehensive Peace Agreement." (NOTE: The draft act assumes, but does not specify, that the South's autonomous status is to continue in this event. END NOTE).

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"SOUTHERNER" STRICTLY DEFINED
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¶8. (SBU) The SPLM's draft strictly limits voting to "Southerners," defined as: i) a person or person whose parent/grandparent was/is a member of any Southern Sudanese indigenous community existing in 1956, or ii) whose ancestry can be traced through the agnatic or male line to any one of the South's ethnic communities. It also permits voting rights to those with permanent residency in the South since 1/1/1956 and any Southern resident 18 years of age or older. Proof of "status" can be supported by either documentation, oral testimony or a combination of both. . Local elders or chiefs would support oral testimony. Individuals can contest the validity of "named Southerners" by issuing challenges. Similarly, those who believe they were improperly/unfairly excluded from the voter rolls can challenge such exclusions. Registering at multiple voting centers is termed an act of fraud punishable by a \$2,500 fine, the possibility of six months imprisonment, and the possibility of being barred from voting in the referendum. (NOTE: Makeui noted to A/CG that language in this section, in addition to curbing SPLM fears about a Khartoum-supplied "surge" in "Northerners" into the South at

the time of voting, is designed to decrease linkage between the as-of-yet undefined 1956 North/South border and "residency" within Southern Sudan. It should be noted that GOSS President Kiir has offered a different view to interlocutors, frequently linking border demarcation and the referendum as an inseparable corollary to each other. END NOTE.)

ACT MITIGATES FOR CONTINUED POOR HUMAN RIGHTS ENVIRONMENT

¶9. (SBU) The Act compensates for present, slow progress on media reform and protection of human rights in Sudan by providing for a maximum of freedom of expression and association extending to the general public, all media, and "all registered political parties, and all organizations and groupings committed to the CPA." Infringements on such liberties are categorized as criminal offenses, with "acts of sabotage" carrying a \$25,000 fine and possible five-year prison sentence. The Act further guarantees all IGAD member states, UN, AU, Arab League, EU, and other international bodies signatory to the CPA the right to observe and monitor all aspects of the Referendum Process. There also are provisions to consider applications by other observer groups not mentioned specifically by the Act.

AND ENHANCED GOSS CONTROL OF COMMISSION

¶10. (SBU) In a clear move away from current, national-level CPA commissions, the Act provides for an independent nine-member "Southern Sudan Referendum Commission" headquartered in Juba with an office in Khartoum. Its nine-member committee would have a GOSS-nominated majority, with three members nominated by the GNU. President Bashir would select all members in consultation with First Vice President Salva Kiir Mayardit, save for the Chairman, who would be "mutually agreed upon" by the Bashir and Kiir. (COMMENT: Significantly, the quorum to hold meetings is set at five, meaning that one only needs to assemble the committee's "Southern" members to deliberate, act on, and implement policy matters. In contrast to the SPLM's position, the NCP would like the Referendum Commission to be headquartered in Khartoum and contain a balanced number of Northerners and Southerners. END COMMENT.) Similarly, the Act

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awards significant decisions on financing and financial oversight to the GoSS. Although noting that the Commission's funding would come from equal GNU/GOSS contributions, "donations from the Multi-Donor Trust Fund, foreign governments, individuals, institutions, and NGOs may be accepted by either the Presidency or GOSS President "as the case may be, and on the basis of Commission recommendations."

SCOPE, SPACE FOR APPEAL IS SOUTH-CENTRIC TOO

¶11. (SBU) The Commission is charged with establishing a "threshold of permissible error;" any error beyond the threshold invalidates the results and triggers a recount. (COMMENT: The language holds that all ballot papers cast, even if blank, constitute an expression of intent by the voter. END COMMENT.) The GNU must fund any recount effort within one week if the Commission rules that significant fraud occurred or following a court-issued annulment of the entire Referendum. The bill establishes that the courts alone have the right to annul results at individual polling centers. Jurisdiction over appeals during any part of the Referendum Process is limited to the Supreme Court of Southern Sudan and its subordinate appeals courts from the Juba-level through the county-level.

COMMENT

¶12. (SBU) While the Referendum draft is a principled law, NCP objections to it are obvious and, in some ways, understandable. The

definition of "Southerner" virtually excludes all of the South's Arab merchant class. Passage of a bill with such progressive, sweeping, protections for human rights and civil liberties may serve as a precedent for further legislative reform at the national-level, something that the NCP has thus far resisted, but likely would be welcomed by Northern opposition parties. From a practical viewpoint, holding the Referendum at the beginning of 2011 (only 19 months from now) and completing the process of either separation or unification just six months after that appear wildly ambitious. At the most recent Assessment and Evaluation Commission plenary meeting (ref. C), both sides agreed in principle on the need to delink the referendum law from post-2011 arrangements. Both also agreed, in principle, on the need to submit the Referendum Law to parliament quickly. Continued international pressure, especially on the NCP, will be required to accelerate the process.

FERNANDEZ